



---

---

IN THE

**SUPREME COURT OF THE UNITED STATES**

October Term, 1961

---

**No. 144**

---

**STATE BOARD OF INSURANCE, ET AL.,**

**Petitioners,**

*Versus*

**TODD SHIPYARDS CORPORATION,**

**Respondent.**

---

**On Writ of Certiorari to the Court of Civil Appeals  
of Texas, Third Supreme Judicial District,  
Sitting in Austin, Texas**

---

**MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE  
AND AMICUS CURIAE BRIEF OF THE  
STATE OF LOUISIANA**

**JACK P. F. GREMILLION**

*Attorney General of Louisiana*

IN THE  
**SUPREME COURT OF THE UNITED STATES**

October Term, 1961

---

**No. 144**

---

**STATE BOARD OF INSURANCE, ET AL.,**  
**Petitioners,**

*Versus*

**TODD SHIPYARDS CORPORATION,**  
**Respondent.**

---

**On Writ of Certiorari to the Court of Civil Appeals  
of Texas, Third Supreme Judicial District,  
Sitting in Austin, Texas**

---

**MOTION OF JACK P. F. GREMILLION, ATTORNEY  
GENERAL OF THE STATE OF LOUISIANA, FOR  
LEAVE TO FILE BRIEF AS AMICUS CURIAE.**

---

Jack P. F. Gremillion, Attorney General of the State of Louisiana, respectfully moves this Court for leave to file a brief in this case as amicus curiae.

The time for filing amici briefs in support of the position of the State of Texas by consent expired during the month of January, 1962.

The applicant has an interest in this case in that the statutes of the States of Texas and Louisiana relative to the tax on unauthorized insurance not placed through a licensed agent or broker are very similar in content, and applicant has reason to believe that the argument of the State of Texas should be made complete in this Court. If the said argument is approved by this Court, the decisions of the Courts below must be reversed.

s/ JACK P. F. GREMILLION  
*Attorney General*  
State of Louisiana.

## **SUBJECT INDEX**

**Index of Authorities** .....

**Interest of the Amicus Curiae** .....

**Summary of Argument** .....

**Argument** .....

**Conclusion** .....

## INDEX OF AUTHORITIES

Cases:	Pages
<i>Alaska Packers Association v. Industrial Accident Commission of California, et al.</i> , 294 U.S. 532 (1935).....	7
<i>Allgeyer v. Louisiana</i> , 165 U.S. 528 (1896) .....	3
<i>Compania General de Tabacos de Filipinas v. Collector of Internal Revenue</i> , 275 U.S. 87 (1927) .....	4
<i>Hoopeston Canning Co., et al. v. Cullen</i> , 318 U.S. 313 (1943) .....	5
<i>Osborn v. Ozlin</i> , 310 U.S. 53 (1940) .....	4
<i>St. Louis Cotton Compress Co. v. Arkansas</i> , 260 U.S. 347 (1922) .....	3

IN THE  
**SUPREME COURT OF THE UNITED STATES**

October Term, 1961

---

**No. 144**

---

**STATE BOARD OF INSURANCE, ET AL.,**  
**Petitioners,**

*Versus*

**TODD SHIPYARDS CORPORATION,**  
**Respondent.**

---

**On Writ of Certiorari to the Court of Civil Appeals  
of Texas, Third Supreme Judicial District,  
Sitting in Austin, Texas**

---

**BRIEF OF JACK P. F. GREMILLION, ATTORNEY  
GENERAL OF THE STATE OF LOUISIANA,  
AS AMICUS CURIAE.**

---

By leave of this Court, Jack P. F. Gremillion, Attorney General of the State of Louisiana, files this brief as amicus curiae.

**INTEREST OF AMICUS CURIAE**

The amicus curiae, Jack P. F. Gremillion, Attorney General of the State of Louisiana, has an interest in this case

in that the statutes of the States of Texas and Louisiana relative to the tax on unauthorized insurance not placed through a licensed agent or broker are very similar in content.

## SUMMARY OF ARGUMENT

As stated in the brief of the petitioners, more than the interests of the State of Texas and the respondent are involved here. The whole future of State regulation of the insurance business hangs in the balance. Some twenty-two states have provisions similar to that of Texas. For the protection of the insurance buying public on risks located within a State which has such a provision in its Insurance Code, it is only fair and proper that there be an equalization of the tax burden born by risks within such a state.

It is clear that Texas has a definable interest in the contract of insurance involved when those contracts of insurance affect risks and property and people, the general welfare of which Texas is bound to promote. A state may exercise virtually complete power in the regulation of the insurance business in order to protect the interests of its citizens. At no time does a state have within its geographical jurisdiction more elements of the insurance business than the property insured, the insured and the insurer.

Louisiana is seeking to point out all the doubts that have been cast upon the opinion in the case of *Allgeyer v. Louisiana*, 165 U.S. 528, 17 Sup. Ct. 427, 41 L. Ed. 832.

## ARGUMENT

WHETHER TEXAS IS PROHIBITED BY THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT

OF THE UNITED STATES CONSTITUTION FROM  
TAXING INSURANCE PREMIUMS PAID BY PER-  
SONS INSURING TEXAS RISKS ON INSURANCE  
POLICIES CONTRACTED FOR IN NEW YORK.

The Court of Civil Appeals below decided this case on the basis of the court's opinion in the cases *of Allgeyer v. Louisiana*, 165 U.S. 528 (1896), and *St. Louis Cotton Compress Company v. Arkansas*, 260 U.S. 347 (1922). In the *Allgeyer* case, the Court said:

"It (Atlantic Mutual Insurance Company of New York) has done no business of insurance within the State of Louisiana, and has not subjected itself to any provisions of the statute in question. It had the right to enter into a contract in New York with citizens of Louisiana for the purpose of insuring the property of its citizens, even if that property were in the State of Louisiana, and correlatively the citizens of Louisiana had the right without the State of entering into contract with an insurance company for the same purpose. Any act of the State legislature which should prevent the entering into such a contract \* \* \* is an improper and illegal interference with the conduct of the citizen, although residing in Louisiana, in his right to contract and carry out the terms of a contract validly entered into outside and beyond the jurisdiction of the State."

Nowhere in the instant case has the question of the right of an insured to place a policy with an unauthorized insurer been raised. Such a right is admitted. However, the statute involved merely imposes a tax upon the insured so placing insurance with an unauthorized insurer.

In the case of *St. Louis Cotton Compress Company v.*



*Arkansas, supra*, this Court found that a tax on premiums levied by Arkansas was just as much an interference with the liberty of contract as was the fine levied by Louisiana in the *Allgeyer* case.

Finally, in the case of *Compania General de Tabacos de Filipinas v. Collector of Internal Revenue*, 275 U.S. 87, 48 Sup. Ct. 100 (1927), this Court, in an analysis of the *Allgeyer* and *Cotton Compress Company* cases said:

"The effect of them is that, as a state is forbidden to deprive a person of his liberty without due process of law, it may not compel anyone within its jurisdiction to pay tribute to it for contracts or money paid to secure the benefit of contracts made and to be performed outside of the state."

In the *Compania General* case, Mr. Justice Holmes in his dissent (which was concurred in by Mr. Justice Brandeis), said:

"The government has the insured within its jurisdiction. **I can see no ground for denying its right to use its power to tax unless it can be shown that it has conferred no benefit of a kind that would justify the tax, as is held with regard to property outside of a State belonging to one within it.** \* \* \*

"The result of upholding the government's action is just. When it taxes domestic insurance it reasonably may endeavor not to let the foreign insurance escape. If it does not discriminate against the latter it naturally does not want to discriminate against its own." (Emphasis supplied.)

This Court again stated in the case of *Osborn v. Ozlin*, 310 U. S. 53, 60 Sup. Ct. 758 (1940), that:

**"In Allgeyer vs. Louisiana, \* \* \*, apart from the doubts that have been cast upon the opinion there, this state attempted to penalize the making of contracts by its residents outside its borders with companies which have never subjected themselves to local control." (Emphasis supplied.)**

and in *Hoopeston Canning Co., et al. v. Cullen*, 318 U. S. 313, 63 Sup. Ct. 602 (1943), stated that:

"While the wisdom of the Allgeyer case has occasionally been doubted \* \* \*. The Allgeyer and subsequent insurance cases have been recently considered in *Griffin v. McCoach*, supra, at page 506, 507, of 313 U. S., 61 S. Ct. at page 1027, 85 L. Ed. 1481, 134 A.L.R. 1462, and in *Osborn v. Ozlin*, 310 U.S. 53, 66, 60 Sup. Ct. 758, 763, 84 L. Ed. 1074; as the analysis in those opinions clearly indicates, the Allgeyer line of decisions cannot be permitted to control cases such as this, where the public policy of the state is clear, the insured interest is located in the state and there are many points of contact between the insurer and the property in the state."

Inasmuch as this Court has stated that the Allgeyer decision was a doubtful one, we submit that the doubts have firm basis and that the opinion set forth in the Allgeyer line of cases should be reversed.

In the instant case, Texas has exerted its powers as to matters within the bounds of its control. It is submitted that it is clear that Texas has a definable interest in the contracts of insurance when those contracts affect risks and property and people, the general welfare of which Texas is bound to promote. Texas has not imposed conditions upon the privilege

of the respondent to engage in local business which would bring within the area of State power matters unrelated to any local interests. It is our opinion that the matters which Texas seeks to control and tax are not beyond its legitimate interest.

This Court further stated in the *Osborn v. Ozlin* case, *supra*, that:

"In the light of all these exertions of state power it does not seem possible to doubt that the state could, if it chose, go into the insurance business, just as it can operate warehouses, flour mills, and other business ventures, \* \* \* or might take 'the whole business of banking under its control,' \* \* \*. If the state, as to local risks, could thus preempt the field of insurance for itself, it may stay its intervention short of such a drastic step by insisting that its own residents shall have a share in devising and safeguarding protection against its local hazards. \* \* \*. The limit of our inquiry is reached when we conclude that Virginia has exerted its powers as to matters within the bounds of her control."

In the instant case, Texas claims, as Virginia claimed in the *Osborn v. Ozlin* case, *supra*, that:

"\* \* \* her interest in the risks which these contracts are designed to prevent warrants the kind of control she has here imposed. This legislation is not to be judged by abstracting an isolated contract written in New York from the organic whole of the insurance business, the effect of that business on Virginia, and Virginia's regulation of it."

While the Texas statute which the respondent asks this Court to declare unconstitutional does technically encumber a contract made entirely outside of the geographical limits of the Texas jurisdiction, the mere fact that State action may

have repercussions beyond state lines is of no judicial significance so long as the action is not within that domain which the constitution forbids. *Alaska Packers Association v. Industrial Accident Commission*, 294 U. S. 532.

## CONCLUSION

A state may exercise virtually complete power in the regulation of the insurance business in order to protect the interests of its citizens, particularly since insurance is a business affected with the public interest and a business which is regulated in the public interest. At no time does a state have within its geographical jurisdiction more elements of the insurance business affected with the public interest than (1) the property insured, (2) the person to whom the insurance is issued, or (3) the person who issues the insurance. It is submitted that the absence of any one of these elements would not materially affect the state's power to protect the interests of its citizens in the insurance business because the absence of any one of these elements would not materially affect the interest of the state's citizen or of the property insured.

Therefore, it is respectfully submitted that the case of *Allgeyer v. Louisiana*, *supra*, should be reversed and that the decision of the Court of Civil Appeals below be reversed.

Respectfully submitted,

JACK P. F. GREMILLION  
Attorney General of Louisiana

---

*Amicus Curiae*

**CERTIFICATE OF SERVICE**

A copy of this brief amicus curiae and of the motion for leave to file the same have been served pursuant to Supreme Court Rule No. 33 by depositing copies thereof in a United States Mail Box, with first class postage prepaid, addressed to counsel of record for petitioners, Capitol Station, Austin 11, Texas, and addressed to counsel of record for respondent, 510 Gulf Building, Houston 2, Texas.

---

Jack P. F. Gremillion